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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 543

RIN 3141-AA27

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC) amends its minimum internal control standards for Class II gaming under the Indian Gaming Regulatory Act to add standards for kiosks.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. On January 5, 1999, the NIGC published a final rule in the Federal Register called *Minimum Internal Control Standards*. 64 FR 590. The rule added a new part to the Commission's regulations establishing Minimum Internal Control Standards (MICS) to reduce the risk of loss because of customer or employee access to cash and cash equivalents within a casino. The rule contains standards and procedures that govern cash handling, documentation, game integrity, auditing, surveillance, and variances, as well as other areas.

The Commission recognized from their inception that the MICS would require periodic review and updates to keep pace with technology and has substantively amended them numerous times, most recently on September 21, 2012. 77 FR 58708.

II. Development of the Rule

On September 21, 2012, the Commission concluded nearly two years of consultation and drafting with the publication of comprehensive amendments, additions, and updates to Part 543, the minimum internal control standards (MICS) for Class II gaming operations. The regulations require tribes to establish controls and implement procedures at least as stringent as those described in this part to maintain the integrity of the gaming operation.

One of the 2012 additions was the inclusion of standards for kiosks, devices capable of redeeming vouchers and/or wagering credits or initiating transfers from a

patron deposit account. The regulation provided general standards for kiosks but, upon further review, additional standards are needed for the surveillance of kiosks and for the collection and count of their contents.

The Commission published a proposed rule adding kiosk drop, count, fill, and surveillance standards to Part 543 on February 20, 2013 (78 FR 11793). The Commission received numerous comments and, after engaging in two tribal consultations and considering all public comments, has revised the rule.

III. Review of Public Comments

Many commenters expressed overarching concerns with the rule's structure and scope, questioning whether the proposed rule truly contained minimum standards. The Commission agrees with the commenters, and has scaled back the rule to contain minimum internal controls for kiosks. To begin, commenters distinguished kiosks from player interfaces and card tables, explaining that kiosks operate on an imprest level, are maintained on the cage accountability, and do not present the same risks as the revenue generating centers. Therefore, they contend that it is excessive and inappropriate to apply the strict drop and count process to kiosks. The Commission agrees. Accordingly, references to the drop and count team have been replaced with more general terminology (i.e., authorized agents); a provision has been added to allow the count to take place "in a secure area, such as the cage or count room;" and many of the stringent count standards have been removed to account for those operations performing the kiosk count in the cage and to reflect lower level of risk presented by kiosks. By removing many of the count standards, the Commission has also resolved specific concerns about provisions

that were contained in those standards, such as testing count equipment and assigning unique asset identification numbers.

Commenters also suggested that the kiosk standards would be better placed in the Cage section. The Commission acknowledges that kiosks are maintained on the cage accountability and that some provisions may reasonably be organized under the cage section, while others may overlap. Accordingly, where the Cage section contains fill and report standards, similar standards have been removed from the Drop and Count sections to avoid redundancy. The Commission declines, however, to relocate all kiosk standards to the Cage section because the process of removing the currency cassettes and financial instrument storage components is most similar to—though less stringent than—the drop and count process for player interfaces and card tables. By removing the report provisions, The Commission has also resolved commenters’ concerns regarding the automatic generation of the reports and any incidental viewing of them by those removing the currency cassettes and/or financial instrument storage components.

Commenters also expressed concerns with definitions. Two comments suggested that the definition of kiosk should be limited only to the type of kiosks that dispense currency. It appears, however, that the commenters were referencing a definition of kiosk that has since been superseded by the publication of 25 CFR 543.2 on September 21, 2012 (77 FR 58708). The Commission believes that the current definition satisfies the commenters’ concerns by appropriately limiting the term to redemption kiosks.

Additionally, commenters objected to defining currency cassettes as a “locked” compartment because not all cassettes are locked and it would be impracticable and cost prohibitive to have a lock installed on each cassette. The Commission agrees and has

removed “locked” from the definition. Additionally, the Commission has replaced the controlled key standards for kiosks with a more general statement requiring controls to be established and procedures implemented to safeguard the keys for kiosks. Further, the Commission notes that § 543.18(d)(3) adequately protects the integrity of currency cassettes by requiring them to be secured with a lock or tamper resistant seal if not placed inside a kiosk.

Commenters stated that requiring three agents to remove currency cassettes and financial instrument storage components from kiosks is excessive. The Commission agrees and has reduced the requirement to two agents.

Commenters explained that requiring operations to test currency cassettes to verify the correct denomination in each cassette is not possible for many machines because they have multiple cassettes of the same denomination and the machine must exhaust the first cassette before dispensing from the others. The Commission appreciates this explanation and has replaced the standard with a more general requirement for operations to establish controls and implement procedures to ensure that cassettes contain the correct denominations.

One commenter requested clarification of “emergency” as it applies to authorized persons being permitted to access full kiosk currency cassettes and financial instrument storage components “in an emergency” for resolution of a problem. As the Commission has explained in previous preambles (See 77 FR 58708), the tribal gaming regulatory authorities and operation management are in the best position to define the term and the Commission declines to substitute its judgment.

One commenter noted that coupons have cash value and must, rather than “may,” be recorded. The Commission chooses not to make this change, but intends to consider it in the next rulemaking session.

Commenters suggested that Tier A facilities should be exempted from the requirement to notify surveillance before removing cassettes and components from kiosks because they are not required to have a staffed surveillance room. The Commission acknowledges this concern, notes that the discrepancy also appears in the drop and count standards for player interfaces and card games, and intends to address the issue comprehensively in the next rulemaking session. In the meantime, the Commission does not expect operations to make futile efforts to notify a nonexistent surveillance staff member.

Finally, commenters expressed concern that the surveillance standard for kiosks may require more than one dedicated camera for each kiosk, presenting a considerable expense to operations. The Commission stresses that the cameras need only capture a general overview of each kiosk with sufficient clarity to identify the activity and the individuals performing it. This means, for example, that if a patron is redeeming a voucher, someone viewing the surveillance footage should be able to determine that the activity was a redemption. The camera is not required to capture the amount of the voucher or the denominations of currency being dispensed. The Commission declines to reduce the standard further.

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the proposed rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 3141-0009. The OMB control number expires on October 31, 2015.

Text of the Final Rule

For the reasons discussed in the preamble, the Commission amends 25 CFR part 543 as follows:

PART 543—MINIMUM INTERNAL CONTROL STANDARDS FOR CLASS II GAMING

1. The authority for Part 543 continues to read as follows:

Authority: 25 U.S.C. 2702(2), 2706(b)(1-4), 2706(b)(10).

2. Amend § 543.2 by adding a definition for *currency cassette* in alphabetical order to read as follows:

§ 543.2 What are the definitions for this part?

Currency cassette. A compartment that contains a specified denomination of currency.

Currency cassettes are inserted into kiosks, allowing them to dispense currency.

3. Amend § 543.17 by revising the section heading and paragraphs (h) and (i), and adding paragraphs (j) and (k) to read as follows:

§ 543.17 What are the minimum internal control standards for drop and count?

(h) *Collecting currency cassettes and financial instrument storage components from kiosks.* Controls must be established and procedures implemented to ensure that currency cassettes and financial instrument storage components are securely removed from kiosks. Such controls must include the following:

(1) Surveillance must be notified prior to the financial instrument storage components or currency cassettes being accessed in a kiosk.

(2) At least two agents must be involved in the collection of currency cassettes and/or financial instrument storage components from kiosks and at least one agent should be independent of kiosk accountability.

(3) Currency cassettes and financial instrument storage components must be secured in a manner that restricts access to only authorized agents.

(4) Redeemed vouchers and pulltabs (if applicable) collected from the kiosk must be secured and delivered to the appropriate department (cage or accounting) for reconciliation.

(5) Controls must be established and procedures implemented to ensure that currency cassettes contain the correct denominations and have been properly installed.

(i) *Kiosk count standards.* (1) Access to stored full kiosk financial instrument storage components and currency cassettes must be restricted to:

(i) Authorized agents; and

(ii) In an emergency, authorized persons for the resolution of a problem.

(2) The kiosk count must be performed in a secure area, such as the cage or count room.

(3) If counts from various revenue centers and kiosks occur simultaneously in the count room, procedures must be in effect that prevent the commingling of funds from the kiosks with any revenue centers.

(4) The kiosk financial instrument storage components and currency cassettes must be individually emptied and counted so as to prevent the commingling of funds between kiosks until the count of the kiosk contents has been recorded.

(i) The count of must be recorded in ink or other permanent form of recordation.

(ii) Coupons or other promotional items not included in gross revenue (if any) may be recorded on a supplemental document. All single-use coupons must be cancelled daily by an authorized agent to prevent improper recirculation.

(5) Procedures must be implemented to ensure that any corrections to the count documentation are permanent, identifiable, and the original, corrected information remains legible. Corrections must be verified by two agents.

(j) *Controlled keys*. Controls must be established and procedures implemented to safeguard the use, access, and security of keys for kiosks.

(k) *Variances*. The operation must establish, as approved by the TGRA, the threshold level at which a variance must be reviewed to determine the cause. Any such review must be documented.

4. Amend § 543.21 by adding paragraph (c)(6) to read as follows:

§ 543.21 What are the minimum internal control standards for surveillance?

(c) ***

(6) Kiosks: The surveillance system must monitor and record a general overview of activities occurring at each kiosk with sufficient clarity to identify the activity and the individuals performing it, including maintenance, drops or fills, and redemption of wagering vouchers or credits.

Dated: September 24, 2013, Washington, DC.

Tracie L. Stevens,
Chairwoman.

Daniel J. Little,
Associate Commissioner.

Jonodev O. Chaudhuri,
Associate Commissioner.

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